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IS VIRGINIA A REPUDIATING STATE?  
AND  
THE STATE'S GUARANTEE, WHAT IS IT WORTH?

BEING TWO LETTERS BY

**ROBERT TYLER, ESQ.**  
OF PHILADELPHIA,

AND AN EXAMINATION, BY

“A CITIZEN” OF VIRGINIA,

OF THE DECISION OF THE

SUPERIOR COURT OF CHANCERY FOR THE RICHMOND CIRCUIT,

IN THE CASE OF THE

RICHMOND, FREDERICKSBURG AND POTOMAC RAIL ROAD COMPANY

*vs.*

THE VIRGINIA CENTRAL, AND ORANGE & ALEXANDRIA R. R. COMPANIES.

RICHMOND:

PRINTED AT THE WHIG JOB OFFICE.

1858.



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## IS VIRGINIA A REPUDIATING STATE?

PHILADELPHIA, August 21, 1858.

To the Editors of the Enquirer:

*Gentlemen,*—It is with no little chagrin that I venture to address such a question to you—is Virginia a repudiating State? Although I am now, and have been for years past a citizen of Pennsylvania, and am bound to my adopted State by the strongest of personalities, as well as by a sense of gratitude and interest, the old Commonwealth of Virginia is as dear to me as a faithful memory and a just pride can make her. Recently in a conversation with a friend here, a man of character and substance, I expressed my surprise at the low price of Virginia State bonds; my attention having been attracted to the fact, that while New York and Massachusetts fives, and even New York City fives, were *at a premium*, Virginia sixes were but little above 90; and I added, that with the great resources and the unsullied faith of Virginia, her obligations ought to be esteemed as safe as British consols. My friend asked, with rather a doubtful expression at my emphasis, if I was not aware that the faith of Virginia was *not* unsullied, and that he was sorry to say to *me*, a born Virginian, there was in her history one gross breach of public faith, by which *he*, a Philadelphian, had been and was a sufferer. I naturally and with no little mortification, made further inquiries (as I have since done of others, to whom I have been referred, and with precisely a similar exposition in every instance) when he presented, substantially, the following statement:

“That he was one of the original subscribers to the stock of the Richmond, Fredericksburg and Potomac

Rail Road Company; that he and many others in Philadelphia had made subscriptions to this then doubtful enterprise, on the solemn pledge given by the Legislature of the State, the nature of which was fully discussed and understood at the time, and given only, because without such pledge subscriptions in this or any other market could not have been obtained for the stock, *that the work should be protected for the term of thirty years from its completion, against all competition for travel between Richmond and Washington.* That notwithstanding this pledge and the published admission of the Virginia Central Rail Road Company, (then the Louisa,) at the time of extending their road from the junction to Richmond, that they would have no *right* to carry passengers between Richmond and Washington, and their then declaration that they had no *intention* to convey such passengers, nevertheless as any one could see by the advertisements in the newspapers and elsewhere, *through* tickets are now and have been for some time back, sold by this road and the Orange and Alexandria Rail Road, for all travel passing between Richmond and Washington, whether passing merely between these cities or going further North or South; while so far the Richmond, Fredericksburg and Potomac Rail Road, in which he had become interested on what he supposed the inviolate faith of the State, had entirely failed to obtain of the courts of the State any redress for this grievance, by which the Company had been at great loss, and on account of which its bonds and stock had been depreciated."

Now, Messrs. Editors, if the case be as stated by my friend and corroborated by others, (and I have great confidence in the good sense and veracity of my informants,) it seems to me one of such moment to all who feel concerned in the true honor and welfare of Virginia, that in the midst of many pressing engagements, I

have determined to bring the matter to your notice and that of the people of Virginia. I have the conviction that nothing is or can be more sensitive than credit, or more important to the standing and welfare of a State than *unbroken and unsullied faith*.

It is perhaps proper I should add that I have not the slightest pecuniary interest in the Richmond, Fredericksburg and Potomac Rail Road Company, never having even seen a certificate of stock or bond of said Company. But the honor of the Old Dominion should be unsuspected. It should not be the subject on the streets of this or any other city, of either an honest complaint or of a pitiless taunt; and I can plainly perceive it can scarcely continue to be confided in, if a palpable breach of it remain unredressed by the courts of the Commonwealth, and countenanced by public opinion. You are aware that the reasoning of every reflecting mind must be, that if the faith of the State cannot be preserved and protected *against merely a conflicting interest doing flagrant wrong and admitting it at the same moment*, its sacred inviolability *cannot* be depended on when the State shall have borrowed all it wants, *or that it can borrow*, and the tax payers finding their taxes onerous may be tempted to listen to the advice of demagogues and throw them off.

Your obedient servant and friend,

ROBERT TYLER.

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PHILADELPHIA, Sept. 5, 1858.

To the Editors of the Enquirer:

*Messrs. Editors*,—Accept my best thanks for having so promptly published my communication, headed “Is Virginia a repudiating State?” I have read your pre-



fatory editorial comments with the strict attention the importance of the subject demands, and I sincerely wish I could now deem it proper to abstain from all further reference to this unpleasant topic, and point to the editorial columns of the "Enquirer" as affording a complete vindication of the good faith of the State of Virginia when impugned, by what I might then regard, as the querulous cavilling and complaints of the bond and stockholders of the Richmond, Fredericksburg and Potomac Rail Road Company, residing in the city of Philadelphia. I trust you do not doubt that it would be my pride and pleasure to concur with you in opinion, if I could conscientiously do so, and thus concurring, to set about the work—a somewhat difficult task from all appearances—of disabusing the minds of many substantial men here of false impressions. It would indeed afford me the greatest pleasure to be able to satisfy them that they have no more reason *now* for doubting the good faith of my native State, than they had when they subscribed, years ago, large sums of money to construct the Richmond, Fredericksburg and Potomac Rail Road, on the *pledge* of the General Assembly contained in the thirty-eighth section of the Charter of the Company. But I must frankly declare that, after as full an examination of the question as circumstances will admit, I *cannot* agree with you. I will, therefore, proceed to present to you, and to the people of Virginia, as briefly as may be, my reason for differing from your conclusions, as set forth in your remarks accompanying my communication. And in the first place permit me to call your attention to the 38th section of the Act of Incorporation of the Richmond, Fredericksburg and Potomac Rail Road Company. It reads thus:

"And, whereas, the rail road authorized by this act will form a part of the main Northern and Southern route between the city of Richmond and the city of

Washington, and the privilege of transporting passengers on the same and receiving the passage money, will, it is believed, be a strong inducement for individuals to subscribe for stock in the company, and the General Assembly considers it just and reasonable that those who embark in the enterprise should not be hereafter deprived of that which forms a chief inducement to the undertaking:

“38th. Be it, therefore, enacted and declared, and the General Assembly *pledges* itself to the said company, that, in the event of the completion of the said rail road from the city of Richmond to the town of Fredericksburg, within the time limited by this act, the General Assembly will not, for the period of thirty years from the completion of the said rail road, allow any other rail road to be constructed between the city of Richmond and the city of Washington, or for any portion of the said distance, the probable effect of which would be to diminish the number of passengers travelling between the one city and the other, upon the rail road authorized by this act, or to compel the company, in order to retain such passengers, to reduce the passage money: Provided, however, that nothing herein contained shall be so construed as to prevent the Legislature, at any time hereafter, from authorizing the construction of a rail road between the city of Richmond and the towns of Tappahannock or Urbanna, or to any intermediate points between the said city of Richmond and the said towns: And provided, also, that nothing herein contained shall be construed to prevent the General Assembly from chartering any other company or companies to construct a rail road from Fredericksburg to the city of Washington.”

If I interpret your remarks correctly you seem to think that this solemn pledge or guarantee of the Legislature of Virginia, viz: “That the General Assembly will not, for the period of thirty years from the comple-

tion of the said Richmond and Fredericksburg Rail Road, allow any other rail road to be constructed between the city of Richmond and the city of Washington, or for any portion of the said distance, the *probable effect* of which would be to diminish the number of passengers travelling between the one city and the other upon the rail road authorized by this act, or to compel the company, in order to retain such passengers, to reduce the passage money," given to those who might be induced by such a pledge to subscribe their moneys to this enterprise, meant *nothing* at the time the act was passed and means *nothing* now, and is, therefore, to be dismissed from our consideration as a contemptuous nullity. But in this I must differ with you; in this I am sure others will differ with you, while there are many, I fear, whose affection and respect for the State of Virginia, being naturally much less than my own, should such a construction of the terms of this section of the Act of Incorporation prevail as the foundation for a rule of judicial decision in the case, may be disposed to regard the procuring of loans under such legislative publication of special advantages to the Company, as very nearly akin to the offence known to the law as *that of obtaining money or goods under false pretences*. By a strange misapprehension you appear to think, too, that the Courts of the State and the Supreme Court of the United States have decided that this Company are entitled to no special privileges whatever of passenger travel under the act of Assembly in which they find charter—that the grave and potential authority of the courts may be cited for the extraordinary opinion, *that the distinct and positive pledge contained in the 38th section of the Act of Incorporation, meant nothing* when enacted, but a false light held out to the unwary here in Philadelphia and elsewhere to secure subscriptions to a great work of Internal Improvement for the benefit of

the State, and means *nothing* now; to be treated only as idle words not likely to impose on any business man of common sense and discretion. But the truth is that neither the Courts of Virginia nor the Supreme Court of the United States have said any such thing, but on the contrary have committed themselves against the possibility of ever arriving at such a preposterous conclusion. By some singular inadvertence you appear to have misconceived the whole subject, both as regards its history in point of fact, and the principles of law which were decided by the courts in the case heard and decided by them, which case so heard and decided only bears incidentally on the issue now before the Courts of the State, and to which I have taken the liberty to invite your attention and that of the people of Virginia.

The history of the case shows in brief, that the Richmond and Fredericksburg Rail Road Company was chartered by the State in 1834, the charter containing, among other things, the provisions already quoted. In the year 1836, the *Louisa Road* was incorporated, and two years afterwards it was opened from Louisa Court House to the Junction near Taylorsville. In the year 1848 the Legislature passed an act authorizing the Louisa Company to extend their road from the Junction to the Dock in the city of Richmond, subject to certain conditions, which, if accepted and performed by the Richmond and Fredericksburg Road, would have had the effect to defeat the charter thus given. The Richmond and Fredericksburg Road refused to accede to such conditions, and filed a bill in the Superior Court of Chancery for the Richmond Circuit, to restrain the Louisa Rail Road Company from constructing the line of their road from the Junction to the Dock in the city of Richmond. The bill prays that the respondents may be enjoined:

Ist, From entering upon any lands which may be

condemned for the use of the complainants' road, for the purpose of constructing a rail road across it.

2d. That the respondents may be enjoined from all further proceedings towards the construction of a rail road between the Junction and the city of Richmond.

3d. From transporting on the rail road so proposed to be constructed, persons, property and the mail, and especially from transporting passengers travelling between the city of Richmond and the city of Washington.

The State Court decided: 1st, "That the privilege or monopoly guaranteed to complainants by the 38th section of their Act of Incorporation, *was that of transporting passengers between Richmond and Washington*; but that the Legislature by that enactment did not part with the power to authorize the construction of a rail road between Richmond and Fredericksburg for *other purposes*; that they had therefore the right to authorize the extension of the respondents' road to the Dock in the city of Richmond."

2d. "That the grant of a franchise to one company to make a rail road, is not infringed by authorizing another rail road to be laid across it; and paying such damages as may accrue to the first in consequence thereof."

3d. "That if the Louisa Company, (now the Virginia Central,) should thereafter use their road by transporting passengers in violation of the rights guaranteed to complainants by the 38th section, and there should be no adequate remedy at law, it might be proper to interfere by injunction to enforce such a proceeding."

The complainants' bill was dismissed on these grounds, and the decree in the case having been affirmed by the Court of Appeals, the case was then taken by the complainants to the Supreme Court of the United States. The Supreme Court of the United States decided, 1st, That the stipulation in the 38th section was to be con-

strued strictly against the corporation; 2d, That it was not violated merely by chartering another rail road which might be used *exclusively* to transport *merchandise*. The opinion of four of the Judges, himself included, being a majority of the Court, was delivered by Judge Grier, while three of the Judges, Curtis, Wayne and McLean, dissented; Judge Daniel declining to sit in the case, because of being a stockholder in the Richmond and Fredericksburg Company. Judge Curtis delivered a learned and powerful dissenting opinion on the part of the minority, in favor of enjoining the Louisa Road from the *construction* of their line from the Junction to the city of Richmond. It is plain, from all this, that the question of the *construction* of the road, from the Junction to the city of Richmond by the Louisa Company, as authorized by the act of the 23d of March, 1848, was the only question decided by the Court in favor of that Company, on the ground that the stipulation in the charter of the Richmond and Fredericksburg Company was not violated merely by chartering another road, *which might be used exclusively to transport merchandise*.

Now I am informed by the gentleman of whom I have heretofore spoken, that the bond and stockholders of the Richmond and Fredericksburg Company do not pretend, at this time, to contest the propriety of this decision. They submit, with as good grace as possible, to the wisdom of a majority of the Supreme Court, although it is clear that the Legislature of Virginia, to procure subscriptions to the Richmond and Fredericksburg Rail Road in 1834, promised those citizens of Philadelphia and elsewhere, who loaned their money in reliance on such promise, to do what has *not* been performed. The matter of which they complain has arisen since the decision in this case. It appears that the Louisa Company, known at this time, in connection

with other roads, as the Virginia Central Rail Road Company, had no sooner completed their road from the Junction to the city of Richmond, than they not only transported *freight* and merchandize over their line, but commenced to carry “way” passengers, and for some time back have gone so far as boldly to advertise for and to carry “through” passengers, not only those going merely between the city of Richmond and the city of Washington, but those going further North and South. Nearly, or quite *five* years ago the Richmond and Fredericksburg Company filed a bill in the Superior Court of Chancery for the Richmond Circuit, and prayed for an injunction to restrain the Virginia Central Rail Road Company from violating the stipulation concerning *travel*, admitted by all to have been guaranteed to them by their act of incorporation, and in which, it really seems to me, they cannot be disturbed for the period limited in the act, unless the good faith of the State shall be sacrificed to that end. I have carefully read the case in 13 Howard’s, to which you have kindly referred me; and also the proceedings in the suit before the Superior Judge in Chancery in the Richmond Circuit—and when I refer to the declarations of the Judges, both State and Federal, when giving their opinions in the case, and to the recorded admissions under oath, of the respondents, I confess myself at a loss to understand, upon what plea of honesty, or principle of justice, whether considered between the State and the Richmond and Fredericksburg Company, or as a question of fair dealing between man and man, the Virginia Central Rail Road Company have been permitted, by judicial delays, and apparently evasive decrees, to commit spoliation for so long a time, on the guaranteed rights and profits of the Richmond and Fredericksburg Company. I know that you will agree with me, that no plea of expediency, or pretended necessity, will justify a plain robbery by one consequent

on the repudiation of a binding contract by another. Judge Grier, in delivering the opinion of the Supreme Court, says: "*That the respondents will not be allowed to carry the passengers travelling between the city of Richmond and the city of Washington is admitted*; and they deny any intention of so exercising their franchise as to interfere with rights *secured to complainants*."

Again, he says: "The act of 1848, authorizing the extension of respondents' road is silent as to any grant of power to transport passengers so as to interfere with the *pledge given* to the complainants. It is sufficient for the decision of the case before us to say that the grant of authority to respondents to extend their road does not *per se* impair the *obligations* of the *contract* contained in the 38th section of the complainants' charter." Still, again, Judge Grier says: "On the contrary, the preamble connected with this section (the 38th) shows that complainants' road was expected to form part of the main Northern and Southern route between the city of Washington and the city of Richmond, and the *inducement* held out to those who should subscribe to its stock was a *monopoly of transporting passengers* on this route, and this is all that is *pledged or guaranteed to them* or intended so to be by the act." And, finally, he declares "leaving, therefore, the question as to the proposed construction of the contract or rights guaranteed to the complainants by the section of their charter *to be settled when a proper case arises*, we are of opinion that the State Court did not err in refusing to enjoin respondents from *constructing* their road according to the authority of the act of the 27th of March, 1848, and that said act does not *impair the obligation of the contract made with the complainants*, in the 38th section of their Act of Incorporation."

From this it incontestably follows, that there was not a single Judge, on the bench of the Supreme Court of



the United States, who was not of opinion that the good faith of the State of Virginia was *pledged* to the Richmond and Fredericksburg Company, to protect them against the Louisa or Virginia Central Road in the contract made by the State with the Company in the 38th section of the Act of Incorporation, so far as the transportation of passengers is concerned.

I find, on examining the record of the case, that the Judge of the Superior Court of Chancery for the Richmond Circuit, while refusing an injunction against the *construction* of the road, says, “*It is admitted by all, that the guarantee contained in the 38th section of the charter, secures to the Fredericksburg Company the right to transport all passengers passing along the line of the road throughout its whole extent; and I am of opinion, that by a just and proper construction of that section, taking it altogether, they are also intended to be secured in the right to transport all passengers passing along the line of their road for any portion of distance, who, in the absence of any other rail road connected with this, would find it convenient to use it as a means of travelling.*” In the answer put in by the Louisa Company to the bill filed by the Fredericksburg Company to enjoin the construction of the road between the Junction and Richmond, the respondents declare under oath that:

“Upon this enactment it is obvious to remark, that the design of it was to establish ‘a Northern and Southern route’ by rail road, and to protect the rail road company in the enjoyment of the profits of that route, and give them the exclusive right of all the passengers travelling to and from the city of Richmond and Washington; for it is manifest, as will be hereafter shown, and the term ‘between,’ in the preamble, and in the 38th section, really means ‘to and from.’ That it does not forbid the construction of any other rail road between

Richmond and Washington, but only forbids the construction of a rail road which shall carry passengers passing from Richmond to Washington, and *vice versa*, is manifest in the terms of the section; for, not terminating with the declaration that no rail road should be constructed for the whole, or any portion of 'the distance,' the section proceeds to define the kind of rail road which was intended, by adding 'the probable effect of which would be to diminish the number of passengers travelling between the one city and the other upon the rail road authorized by this act, or to compel the company, in order to retain such passengers, to reduce the passage money.' It is clear, then, that the Legislature retained the right to authorize the construction of any rail road which did not fall within the definition of the act, as, for instance, a road to transport coal, and a road to transport produce of any kind, *or any other freight than passengers*; and such a road might be made to run in a parallel line with the road of the complainants for its whole distance."

In the bill filed by the Louisa Company, with a view of obtaining a dissolution of the special injunction granted by the Supreme Court of Chancery, in the case, they say explicitly, among other things, as a ground for dissolving the injunction, "Because your orators do not propose to carry upon their road any passengers going from Richmond and Washington or from Washington to Richmond, or any freight which passes over the Richmond and Fredericksburg Rail Road," &c. Under these circumstances, might not the stockholders of the Richmond, Fredericksburg and Potomac Company, here and elsewhere, infer, if the Virginia Central Rail Road Company should attempt to carry passengers between Richmond and Washington, in the face of their own recorded admissions, *under oath*, as to a consciousness of their obligations and duties, that the con-

veyance of such passengers by them, would be both in violation of the faith of the State and the rights of the Fredericksburg Company, unless the Courts of the State or the Board of Public Works, if necessary, should promptly intervene to prevent it. But it appears that so far from positive, actual, *bona fide* redress being given for those crying grievances, the Fredericksburg Road can obtain no proper remedy, while the work of spoliation goes unceasingly on.

You observe, "that the circuitous route between Richmond and Washington, which, according to Mr. Tyler's informant, is now injuring the Fredericksburg Company, has grown out of the necessities of the State, and because passengers select that circuitous route, by way of Gordonsville, we cannot see how the pledges of Virginia are violated."

Is this so? Is it not clearly in "the power of the authorities and the courts of the State to prevent the adoption of *arrangements* to invite and divert the travel between Richmond and Washington from the direct and natural route, (to which, by a solemn pledge of the State it is secured,) to the less comfortable and circuitous route? I allude, by the term *arrangements*, to "through" tickets at *reduced rates* as compared with the local rates on the Orange and Alexandria and Virginia Central Rail Roads, the effect of which must necessarily be to diminish the number of travellers passing between Richmond and Washington on the Fredericksburg Road. The fact of this illegally competing route being *circuitous*, seems to me an exaggeration of the wrong, inasmuch as even the public accommodation cannot be urged in favor of allowing its competition for travel better accommodated by the route to which it is pledged. Certainly it strikes me the least that can be asked of the authorities and courts of the State, is that they will not allow *special inducements* to be held out to

Northern and Southern travellers to leave the direct route, to which the travel is pledged, for another and more circuitous route.

You observe, in conclusion, "that you do not see any very intimate connection between the question which heads Mr. Tyler's letter and the subject discussed therein." I think that a little further reflection will cause you to view this matter differently.

1st. You will admit there may be a repudiation of *other* pledges, besides obligations to pay money.

2d. The State is the owner of three-fifths of the stock of the Virginia Central, and Orange and Alexandria Rail Road Companies, which make these "through" tickets in open and admitted violation of her good faith to the Fredericksburg Company, and as the Board of Public Works, the agent of the State in supervising the public works in which the State is interested, appoints *three* out of five of the Directors of each of the above companies, it will naturally and reasonably be supposed that those tickets are not objected to by them.

3d. The Board of Public Works is the agent of the State, for procuring *loans* for purposes of improvement, and it is certainly calculated to impair confidence in those loans, if there is less sensibility than there should be in regard to the faith of the State on the part of those through whom its obligations are incurred.

I do regret most sincerely to find there is so much foundation for the opinions of those in this city, who consider that the State of Virginia has not dealt fairly by them, and I think it more than probable that the opinions entertained here on this subject, have prevented a demand which otherwise would have existed for Virginia securities. The true course under such circumstances is not to endeavor to persuade ourselves that no wrong is being done, but as far as possible to prevent and repair the wrong.

My attention has been called to my esteemed friend, Mr. Lyons' letter, and to the answer of the Virginia Central Railroad Company, to the bill of complaint of the Richmond and Fredericksburg Company, filed *some years ago* in the Circuit Court of Richmond. There are few men, for whose splendid talents, learning and accomplishments, I entertain greater respect than for those of James Lyons. But he frankly informs us all, that he is the counsel of the Central Rail Road Company, and one of its stockholders; and with all deference to him, and his admitted worth, *he is not in a situation impartially to judge this question.* The credit of Virginia cannot be maintained on the exchange here, or in New York, or elsewhere, where money lenders congregate, by a special plea in justification of a real or virtual repudiation of a sacred contract.

Your obedient servant and friend,

ROBERT TYLER.

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RICHMOND, September 7, 1858.

To the Editors of the Enquirer:

*Messrs. Editors,*—In your remarks prefatory to the communication of Mr. Robert Tyler of Philadelphia, published in your number of the 26th ultimo, you, I think, are under a misapprehension of THE CHARACTER of the judicial decisions, which have been made in relation to the rights of the Richmond, Fredericksburg and Potomac Rail Road Company, under their charter. The opinion of Judge Meredith, the only one yet given on the question of the USE OF THE RAIL ROAD of the Virginia Central Rail Road Company, admits expressly

the right of the Richmond, Fredericksburg and Potomac Rail Road Company, under the guarantee of its charter, BOTH TO THE THROUGH TRAVEL between Richmond and Washington and THE WAY TRAVEL, as you will perceive by the following extracts from it:

“First, of the through travel, or that which passes between the city of Richmond and the city of Washington; it cannot be denied that the guarantee contained in the 38th section of their charter, secures to the complainants the right to transport all travellers passing along the line of their road, through its whole extent. In truth the counsel for the respondents in their argument in support of the claim of their clients to carry the “way travel” from the Junction to the city of Richmond, conceded that the privilege guaranteed to the complainants by their charter, applied to the through travel, and insisted that it applied to that travel only.

“If any doubt existed, after what I have said of the exclusive right of the complainants to transport the “way travel,” it would be removed by another clause of the 38th section. By that section the Legislature pledges itself to the complainants, not to allow any other rail road to be constructed between the city of Richmond and the city of Washington OR FOR ANY PORTION OF THE SAID DISTANCE. Why should the Legislature pledge itself not to allow a rail road to be constructed for any portion of said distance, if its intention had been to confer on the complainants the privilege of transporting the through travel only?”

Now the complaint of the stockholders of the Richmond, Fredericksburg and Potomac Rail Road Company, here, as well as abroad, is, that whilst the opinion of Judge Meredith (as of every judge who has considered the case) conceded the rights of the Richmond, Fredericksburg and Potomac Rail Road Company to both the through and way travel, the injunction asked for against

a violation of their rights, was refused, and in consequence of this refusal, the Virginia Central Rail Road Company, who in their answer to the original bill of the Richmond, Fredericksburg and Potomac Rail Road Company, applying for an injunction against the construction of their rail road, as a reason why the injunction should "not be granted, stated that they did not propose to carry, but expressly disclaim the right to carry, upon their road any passengers going from Richmond to Washington or from Washington to Richmond," are now conveying all the passengers between Richmond and Washington, who can be diverted from the Richmond, Fredericksburg and Potomac Rail Road, by more reduced rates of fare and arrangements with other companies in and out of Virginia.

Now, Messrs. Editors, it humbly seems to me that there must be some violation of faith in this matter. If when the State of Virginia has solemnly pledged herself (as an inducement to capitalists and others, to subscribe large sums of money to build a rail road between Richmond and the Potomac) that it would not, "for the period of thirty years from the completion of said rail road, allow any other rail road to be constructed between the city of Richmond and the city of Washington, OR FOR ANY PORTION OF THE SAID DISTANCE, the probable effect of which would be to diminish the number of passengers travelling between the one city and the other, upon the rail road authorized by this act; or to compel the Company, in order to retain such passengers to reduce the passage money," another rail road can be made for the distance of 28 miles, nearly parallel to the one to which she has given this pledge, ON THE DISCLAIMER, by the parties making the second rail road, OF ANY *right* to convey such passengers, AND OF ANY INTENTION to do so; and if, when these last parties, in the face of their positive disclaimer, and the admitted

rights of the first, proceed to convey such passengers, and use their utmost exertions, by reduced rates of fare and otherwise, to divert travel which they admit was guaranteed by the State to another rail road company, **THEY ARE ALLOWED**, by the authorities and judiciary of the State, **TO PROCEED**; if the faith of the State be not thereby violated, and her engagements repudiated, I am at a loss to imagine any act by which they can be.

A CITIZEN.

*Richmond, September 7, 1858.*

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#### THE STATE'S GUARANTEE, WHAT IS IT WORTH?

Public attention, both in Virginia and beyond her borders, has been attracted to this inquiry in a manner by no means flattering to State pride. Earnest complaints have proceeded from the bond and stockholders of the Richmond, Fredericksburg and Potomac Rail Road Company, of the violation by the Legislature of the *pledge* of the State, contained in the 38th section of its charter, which, if not tolerated, has at least obtained no redress by the judicial tribunals to which that Company has appealed; and if language has any meaning—if the faith of the State *can* be bound by it—it is but too clear that the subsequent grant of privileges to the Louisa (now the Virginia Central) Rail Road Company, in the extent to which they are now claimed and exercised, is a palpable infraction of that solemn public engagement. In this view the subject transcends the limits of mere private interest, and assumes the weight and magnitude of an important public question. Faith, pure and unsullied, is the very life and soul of States—



at once, their ornament and strength. A stain on that of Virginia should be felt and resented as a wound.

It is well known that the Richmond, Fredericksburg and Potomac Rail Road Company was the *pioneer* in the cause of rail road improvement in Virginia. To foster and encourage that enterprise became a favorite and cherished public policy. Accordingly the Legislature in the 38th section of its charter declared:

“And whereas the rail road authorized by this act will form a part of the main northern and southern route between the city of Richmond and the city of Washington, and the privilege of transporting passengers on the same and receiving the passage money will, it is believed, be a strong inducement to individuals to subscribe for stock in the company; and the General Assembly considers it just and reasonable that those who embark in the enterprise should not be hereafter deprived of that which forms a chief inducement to the undertaking:

“§ 38. Be it therefore enacted and declared, and the General Assembly pledges itself to the said company, that in the event of the completion of the said rail road from the city of Richmond to the town of Fredericksburg within the time limited by this act, the General Assembly will not, for the period of thirty years from the completion of the said rail road, allow any other rail road to be constructed between the city of Richmond and the city of Washington, or for any portion of the said distance, the probable effect of which would be to diminish the number of passengers travelling between the one city and the other, upon the rail road authorized by this act, or to compel the company, in order to retain such passengers, to reduce the passage money; provided, however, that nothing herein contained shall be so construed as to prevent the Legislature, at any

time hereafter, from authorizing the construction of a rail road between the city of Richmond and the towns of Tappahannock or Urbanna, or to any intermediate points between the said city of Richmond and the said towns: and, provided also, that nothing herein contained shall be construed to prevent the General Assembly from chartering any other company or companies to construct a rail road from Fredericksburg to the city of Washington."

The act of incorporation containing this *compact*, passed in 1834; for a *compact* it was, to all intents and purposes. It was a stipulation by Government, in its sovereign capacity, with citizens, who were encouraged by it, to advance their property for the benefit of the public—regulating its own conduct and putting a restraint upon its own power to authorize any other rail road to be built for a given time, with the right to levy the tolls, which were secured to the society thereby incorporated—equivalent to a covenant for quiet enjoyment against its own acts for a term of thirty years. When a law is, like this, in the nature of a contract, when absolute rights have vested under it, a repeal of the law cannot divest those rights. So any law granting privileges to others repugnant to those previously contracted for, and granted, would, if available, be a repeal by implication. That which cannot be repealed in express terms, cannot be repealed by implication—by the subsequent enactment of laws repugnant to the provisions of the former act. The defect of power, which would invalidate the one has the same effect upon the other. These are truths so simple and elementary as scarcely to require enunciation, but for the flagrant disregard with which they have been treated.

The extremely liberal terms of this grant will be observed. The Legislature was not content with restrict-

ing its power to authorize another rail road, of which the *termini* should be the cities of Richmond and Washington, respectively, by which direct competition would be created, but the interdict extended to the building of any other road, “the *probable* effect” of which would be, to diminish the number of travellers on the road authorized by the act. And the legislative interpretation of the words “probable effect,” is fixed by the *provisos* to the section. Even a rail road from Richmond to Tappahannock or Urbanna, as it would give communication by water with Washington, it was thought, would have this “probable effect,” and would have been interdicted but for a special saving of legislative power to authorize it. So, as to a rail road between Fredericksburg and Washington; and to put beyond doubt the intent to secure to the company the exclusive enjoyment of all the rail road passenger travel over every part of the line, the State stipulates that no such road shall be authorized “between the city of Washington and the city of Richmond, or for any portion of the said distance.” Moreover the grant and the interdict extend over a period of thirty years, and thus plainly relate not only to the travel existing at the time, or shortly after the time the road should be opened for use, but to the travel throughout that whole period of time, however or by what means soever, it might be increased—whether by steamboats, stages, plank-roads, carriages, or lateral rail roads; and that such increase was contemplated at the time, particularly by rail roads, as a part of the system of improvement then about to be inaugurated, is also historically true.

Under the incitement of this pledge and invitation by the Legislature the capital stock of the Company was soon subscribed, much of it, by non-resident capitalists and others. The road was constructed and opened for

use, to Fredericksburg, in 1837, (a much shorter time than was limited by the act,) and was soon after, as contemplated by the charter, extended to Acquia Creek, on the Potomac. In February, 1836, an act was passed incorporating the stockholders of the Louisa Rail Road Company, having its eastern *terminus* on the line of the Fredericksburg Road, about twenty-five miles from the city of Richmond, making a branch on the stem of that road, and diverging westwardly from the "Junction," so formed. The Louisa road was opened for use to Louisa Court House in December, 1838, and from that time, the passengers using the Louisa Road going to and coming from Richmond, and points between that city and the Junction, passed over the Fredericksburg Road. The increase of travel on "*that portion of the distance*" of the Fredericksburg Road thus occasioned, was regarded by all as being as clearly within the protection of the State's guarantee, as the travel on the whole distance from Richmond to Washington; and those who had embarked their capital in the enterprise which was thus beginning to receive its increased fruits, reposed for the time, in perfect security, on the faith of the State, that "they would not be thereafter deprived of that which formed a chief inducement to the undertaking."

But what a spectacle is now witnessed by those who really believed that a *pledge* on the part of the State, in consideration of a public benefit conferred, really had a meaning? From the time the extension of the Louisa Road from the Junction to the city of Richmond was completed, under legislative authority, the Louisa Company has been engaged in active competition with the Fredericksburg Road for all the travel between these points, the *termini* of the roads respectively, in Richmond, being within a few minutes' walk of each other,

and the roads themselves for all that distance (being more than a third of the distance between Richmond and Fredericksburg) never diverging from each other more than some eight miles! And upon the completion by like authority of the Orange and Alexandria Rail Road from Alexandria to Gordonsville, where it meets the Louisa (now the Virginia Central) Rail Road, (thus forming a continuous line of rail road communication from Richmond to Alexandria, whence there is short and easy access to Washington,) these companies entered into active combination to divert the *through* travel between Richmond and Washington from the Fredericksburg Road, to the line formed by the connection of those two roads—and to that end, have accommodated their hours of arrival and departure to each other, and established in common, a system of through tickets, baggage checks, advertisements, soliciting agents and every other appliance, to secure to themselves and increase the travel thus diverted. And these through tickets are put at reduced rates as compared with the local rates on the connected roads. As one result of this enormous spoliation, it appears by the evidence of the agents themselves of the Central Company, that between the 1st of November, 1855, and the 1st of April, 1857, these combined companies have received, for through tickets from Richmond to Washington, (not to mention those from Washington to Richmond,) within a small fraction of eighty thousand dollars! In the language of one of them “they have transported freight and travel without regard to any diversion of the same from any other road.”

How far has this grievous wrong been authorized by legislation, and to what extent has that legislation been sanctioned by the courts?

Until the year 1848, the transportation of the Louisa

Rail Road Company had been done by the Fredericksburg Company on terms agreed on between them; in truth, the Louisa Road, in its origin was designed, and when opened, was regarded as a *feeder* merely to the Fredericksburg Road through which it was to find its vent to market, and never would have been constructed had the thought then occurred, that it would be afterwards turned into a rival, competing improvement. It diverged from the Fredericksburg Road at an angle which rendered any competition on its part, unless extended to Richmond, for the travel between Richmond and Washington, impossible. Some difference having arisen between the companies as to the terms on which this transportation should be done, it was at the instigation of the Louisa Company, by its agents, seized on by the Legislature, as an occasion to exact from the Fredericksburg Company terms of submission too grievous to be borne, or a forfeiture of the guarantee of the 38th section of their charter, so solemnly assured to it. By the act of 27th March, 1848, this purpose was accomplished. This is absolutely declared in the title of the act, which is, "An Act for the Extension of the Louisa Rail Road to the Dock in the City of Richmond." The 7th section enacts, "That in case the Richmond, Fredericksburg and Potomac Rail Road Company shall, at the next annual meeting of the Stockholders, *stipulate* and *agree*, from and after the expiration of the present contract with the Louisa Rail Road Company, to carry all *passengers* and freight, brought to their road by the Louisa Rail Road Company, from the Junction to the city of Richmond at the same rate per mile, as may at the same time be charged by the Louisa Rail Road Company on the same *passengers* and freight, and shall also *agree* to carry all *passengers* and freight entered at the city of Richmond for any point on the Louisa Rail Road, at the same rate per mile as is charged at the time

for the same by the Louisa Company, and shall also *agree* to submit to the umpirage of some third person or persons, to be chosen by the said companies, the compensation to the Richmond, Fredericksburg and Potomac Rail Road Company, for collecting, at the depots in Richmond, the dues of the Louisa Rail Road Company, and any other matter of controversy which may arise between the said companies owing to the connection between them, then this act is to be void, or else to remain in full force. By the 5th section, it is enacted, "That if the company accept the provisions of this act, and the General Assembly *shall at any time hereafter authorize any Rail Road to connect with the Louisa Rail Road, the passengers* and produce, or other property delivered by the said road, shall be transported *from* the point of connection at the same rate per mile as may at the same time be charged by said company on their *travel*, or tonnage, on the Louisa Rail Road, *from* any point at or between Charlottesville and the junction of said intersecting road to Richmond." The act was "to take effect when accepted by a majority of the stockholders of the Louisa Rail Road Company;" and there was no more doubt of its acceptance by that company than there was of its terms being rejected by the other. It was neither expected nor intended that these terms should be accepted by the Fredericksburg Company. They subject the tolls of that company on all transportation coming from the Louisa Road to the absolute control of the Louisa Company; they compel the Fredericksburg Company for all time to come to submit to private umpirage, not only its rate of compensation for the enforced service of collecting the Louisa Company's dues at the depots in Richmond, but "any other matter of controversy which may arise between the companies owing to the connection between them;" thus forever ousting the jurisdiction of the courts over

any question of right in this respect, which might arise between the companies in the future. And a forced compliance with these terms is styled, a *stipulation* and an *agreement* on the part of the Fredericksburg Company. Should it prove contumacious and *refuse* to *stipulate* and *agree* in the mode prescribed, the penalty inflicted was to be the establishment immediately of a direct competition for its freight and travel for one-third of the distance of its road, and the prospective creation of a rival route, for which provision is made by anticipation in the same act, for the through travel all the way from Richmond to Washington. The act speaks of authorizing *hereafter* a rail road to connect with the Louisa Road, but in truth, on the very day of its passage, (27th of March, 1848,) the same Legislature passed another act "incorporating the Orange and Alexandria Rail Road Company" with a *terminus* at Gordonsville, having just the session before authorized the extension of the Louisa Road to the same point, and beyond it; and by the charter of the Orange and Alexandria Road, (as was done in the case of the Louisa Road,) provision is made, how transportation shall be conducted by the companies when connected; for by the 5th section, it is provided, "That in case any rail road shall hereafter intersect with the rail road by this act authorized to be constructed, the company of the last mentioned road shall carry the *tonnage* and *passengers* from the point of intersection to either *terminus* of the said road at the same rates per mile that they charge for the through *tonnage* and *passengers*." Let it be added, that to the construction of all the roads, by which this competition with the Fredericksburg Road has been authorized and established, the State has contributed its subscriptions. She owns three-fifths of the stock of the Virginia Central and Orange and Alexandria Rail Road Companies,



and reaps in that proportion the fruits of her own violated faith. And her agent, the Board of Public Works, which supervises all the public works in which she is interested, appoints *three* out of *five* of the Directors of each of these companies, and has the power to control their management.

To what extent has this legislation been sanctioned by the courts? In 1849 the Fredericksburg Company filed its bill, complaining that the Louisa Company, under the authority of the act for its extension to Richmond, had commenced constructing a rail road, not from Fredericksburg to the city of Washington, nor between the city of Richmond and the town of Tappahannock or Urbanna, or to any immediate points between the city of Richmond and these towns, but for a "*portion of the distance*" between the city of Richmond and the city of Washington; that is to say, for that portion which is between Richmond and the point where the Louisa Rail Road has, heretofore, joined the rail road of the complainants, computed to be twenty-five miles from the city of Richmond, and in close proximity, all the way, with the complainants' road; setting out the coercive provisions of the act of the 27th of March, 1848, in regard to the complainants' road, the plain object of which was to force them to reduce their rates for passengers and freight below what (but for the said act) they might lawfully have charged, or encounter the rivalry of the Louisa Road along twenty-five miles of their line; a measure which as clearly impaired the obligation of the contract between them and the State, as if their tolls had been reduced by a direct act of legislation. They prayed an injunction to the construction of the proposed road, and to the transportation of persons and property, or the mail, thereon, and especially to the carrying thereon, of passengers traveling thereon between Richmond and Washington. The

Louisa Company in their answer, claim argumentatively, to restrict the complainants' right to the carrying of *through* passengers only, from Richmond to Washington, and with that right they protest vehemently they never mean to interfere; they say, "it is clear the Legislature retained the right to authorize the construction of any rail road which did not fall within the definition of the act, as for instance, a road to transport coal, and a road to transport produce of any kind, or any other freight than *passengers*, and such a road might be made to run in a parallel line with the road of the complainants, for its whole distance." "The true question between the parties, is a question as to the extent to which your respondents may *use* their road; that is, whether they may or may not transport upon their road *passengers* going from Richmond to the West, or some point westward of the road of the complainants, *whose destination is not Washington*, or to some point of the country between Richmond and the rail road of the complainants, and passengers coming from such intermediate point, or the West, to Richmond." "If these views be correct, the right to authorize the *construction* of the road now in progress by the respondents is settled, and of course it is also settled, that the complainants have no right and their court has no right to prevent it. The only open question, if there be any open upon the act, is, how far and in what manner, the road of your respondents may be *used* when completed. May it transfer passengers *at all*? This question does not properly arise *now*, because the road is not *completed*," &c. They claim, however, the right to carry passengers not travelling "from Washington to Richmond, and *vice versa*." As to carrying travellers from one of those places to the other "they here positively disclaim, as they always have done, the purpose or design, on their part, to transport any such passengers; and distinctly renounce it, if there be any

validity in the supposed guarantee; of which they never would have made a question if they had been left peaceably to enjoy their own rights." In a bill filed by the Louisa Company in the course of the case, *and sworn to, by its President*, Edmund Fontaine, they say: because your orators do not propose to carry on their road any passengers going from Richmond to Washington, or from Washington to Richmond, or any freight which passes over the Richmond and Fredericksburg Rail Road," &c. The State court decided:

"That the privilege or monopoly guaranteed to the complainants by the 38th section of their Act of Incorporation, *was that of transporting passengers between Richmond and Washington*; but that the Legislature by that enactment did not part with the power to authorize the construction of a rail road between Richmond and Fredericksburg for *other purposes*; that they had, therefore, the right to authorize the extension of the respondents' road, to the Dock, in the city of Richmond."

"That if the Louisa Company (now the Virginia Central) should hereafter use their road by transporting passengers in violation of the rights guaranteed to the complainants, by the 38th section, and there should be no adequate remedy at law, it might be proper to interfere by injunction to restrain such a proceeding."

On these grounds the complainants' prayer was denied, their bill was dismissed; from the decree of dismissal an appeal was refused by the Virginia Court of Appeals, and that refusal was approved by the Supreme Court of the United States. The Supreme Court decided, that, "in the first charter" (that of the Fredericksburg Company) "there was an implied reservation of the power to incorporate companies to transport *other articles than passengers*; and if the Louisa Rail Road Company should infringe upon the rights of the Richmond Company, there would be a remedy at law, but the appre-

hension of it will not justify an injunction to prevent them from *building* their road." Even this was the decision of only a bare majority of the eight judges who heard the cause (one of the court having declined to sit); and how much it was due to the earnest disclaimers, which have been noticed, may be inferred from the language of Judge Grier, who delivered the Court's opinion. He says: "where do we find that the Legislature have contracted to part with the power of constructing other rail roads, even between Richmond and Fredericksburg, *for carrying coal and other freight?*" "That the respondents" (the Louisa Company) "will not be allowed to carry the passengers travelling between the city of Richmond and the city of Washington *is admitted*; and they deny any intention of so exercising their franchise as to interfere with the rights secured to the complainants." As to any future question which may arise, as to using the road to transport passenger travellers, "to or from the West," he adds the Chancellor was not bound to decide the question by anticipation; and although he may have thrown out some intimation of his present opinion on that question, he has very properly left it open for future decision, to be settled by a suit at law or equity "upon the facts of the case; as they may then appear." "Leaving, therefore, the question as to the proper construction of the contract, or rights guaranteed to the complainants, by this section of their charter, to be settled when a proper case arises; we are of opinion that the State Court did not err in refusing to enjoin the respondents from *constructing* their road," &c. The dissenting judges, doubtless, thought the "proper case" had arisen, as, in the language of Judge Curtis, (one of them,) "the Louisa Company by their original charter, are expressly authorized to carry passengers on their rail road, and when they are empowered by the act now in question, to extend their

road, it is a necessary implication that the extension is for the same uses, and subject to the same rights and powers, and privileges, as the original road to which it is annexed, and accordingly we find that by the 5th section of this act, the Legislature has prescribed a limit of tolls, as well for *passengers* as for merchandise, coming from, or going to, another rail road, and passing over the whole length of the Louisa Road, and each part of it, including the extension." "It is thus clear that there was not a single judge of the eight on the bench of the Supreme Court of the United States, at the hearing, who was not of opinion that the good faith of the state of Virginia was *pledged* to the Fredericksburg Company to protect them against the Louisa, or Virginia Central Rail Road Company, in the contract made by the State, with the company, *so far as the transportation of passengers is concerned*," and no denial of this right, either actual or *practical*, by the judiciary, had thus far occurred.

But the "case" which the courts would not "anticipate," very soon arose. The extension to Richmond was completed in the month of December, 1850, and from that time to the present has been constantly used, alike for the transportation of *passengers* and freight to and fro, upon all parts of the road from Richmond to its ultimate termination; and in November, 1855, the connection at Gordonsville of the Central and the Orange and Alexandria Road having been established, the system of through tickets and through transportation on the continuous route thus formed, commenced and has since continued. The Fredericksburg Company had in advance charged on these companies the design to make this combination. In May, 1852, the Company again appealed to the courts for protection against the wrongful use made of the extended road from Richmond to the Junction, and in their bill prayed "an account of the

receipts of the said Company for travel and freight between the Junction and Richmond which would have accrued to the plaintiffs but for the use of the defendants' road," and such other orders and decrees as might be proper. In the answer of the Central Company, in which they repeated their right to "carry passengers from Richmond to any point west of the road of the plaintiffs and to bring them from any point west of it to Richmond," there occur the following remarkable passages: "As to the rail road from Alexandria to Gordonsville, these respondents have nothing to do with its construction and have no interest in it." "If any wrong be done the complainants by carrying passengers on the Alexandria and Orange Rail Road, it can only be done after the road is made, and not before, and then it will be a wrong done not by these respondents, but by the Alexandria and Orange Rail Road Company, and must be redressed by that Company, and not by these respondents, before it has been committed by any one." These respondents cannot conceive, therefore, why the construction of the Alexandria and Orange Rail Road and its contemplated and possible but uncommitted wrongs have been *lugged* into this cause," &c. The earnest and repeated disclaimers of this Company of any wish or design to interfere with the *through* travel between Richmond and Washington have been referred to above. When, however, the wrongful combination had been consummated which has wrought such grievous injury to the Fredericksburg Company, an injunction was prayed to restrain it, and an inquiry was asked of the amount of loss which it had sustained by a withdrawal of passengers thereby to which it was entitled. To the bill in this instance, the Virginia Central Rail Road Company had no *answer* to make; it was content to *demur* to it, leaving to its associate, the Orange and Alexandria Company, the difficult task of

defending their joint usurpation in an answer which upholds the violation of the State faith by the plea of State necessity—the necessity to have these roads, and to misuse them to the prejudice of granted rights—as if to keep that faith inviolate were not the first of all necessities!

The following seem to be the positions assumed by the State judge in the various phases in which the question of the rights of the Fredericksburg Company was presented to him. In November, 1853, he declined to restrain by injunction the anticipated combination between the Central and the Orange and Alexandria Rail Road Companies because the latter road was not then completed to Gordonsville, and it remained to be seen whether such combination would be formed between them. But he was of opinion “that the guarantee contained in the 38th section of their charter, secures to the complainants the right to transport all travellers passing along the line of their road through its whole extent,” that is, both to the *way* and through *travel* on the whole and every part of their road. But as to what is termed the “Cross” travel, (meaning thereby all the travel which the Fredericksburg Road had been receiving at the Junction from the lateral rail road and transporting thence to Richmond for ten years,) it was thought to be “*created*” by the Louisa Road. Its subtraction, therefore, could not “*diminish*” the number of passengers travelling between Richmond and Washington on the complainants’ road, and the Legislature might properly authorize its transportation from the Junction to Richmond on a road almost parallel with and nearly approaching the complainants’ road for twenty-five miles in the direction of Richmond. Nothing but the “way travel” from the Junction to Richmond was secured to the complainants by their guarantee, but what that was, and within what territorial

limits it existed, and consequently what the orders of account and injunction should embrace, seemed too uncertain on the proofs to justify either. So an inquiry was directed to ascertain "what number of persons in the neighborhood of the Junction, if any, would seek the road of the complainants as a means of travelling to and from the city of Richmond if the road of the defendants had not been constructed; within what distance of the Junction such persons reside, what portions of such persons, if any, have since the completion of the road of the respondents sought it as the means of travelling to and from said city; what injury the complainants have sustained by reason of the diversion of such travel from their road; what injury in future they are likely to sustain by reason of such diversion; what would be a reasonable compensation to be paid by the respondents to the complainants for the privilege of sharing with them the right to transport such persons, and whether the complainants are willing to accept and the respondents to pay such compensation." To this, the Commissioner naturally responded, that such inquiry was impracticable. He said: "The undersigned respectfully submits that the said inquiries cannot be executed unless by taking the depositions of all persons residing in the neighborhood of the Junction, and then the limits would be a serious question to determine." But this was by no means the full measure of the difficulties that beset such an inquiry. For it involves an examination into the tastes and caprices of an indefinite number of persons in their choice between two routes of travel between the same points, offering perhaps equal facilities and conveniences, and between which many might feel indifferent, and all are liable to change as time goes on. The same test was applied to the complainants alleged rights to the *through* travel between Richmond and Washington. The Court being



of opinion after the connection was established between the Virginia Central and Orange and Alexandria Roads, "that the said plaintiff is entitled to relief, if any, only as to such travel passing to and fro, between Richmond and Washington, as would have gone over the road of the plaintiffs if the roads of the defendants had not been constructed, an inquiry was directed to ascertain whether any, and if any, what amount of such travel has been carried over the road of the defendants." At the time of this last direction, there was the most abundant proof in the cause that through tickets to the amount of thousands of dollars, between Richmond and Washington, had been sold by these companies, and that they were systematically persisting in the abuse. As before their roads were thus connected, there was no other rail road route for this through travel than the Fredericksburg route, it would not seem difficult to infer that the establishment of the new route, by Gordonsville had the "probable effect" to diminish, by so much, "the number of passengers travelling between the one city and the other on the rail road" of the complainants. But "as the defendants in their answers do not admit that they have carried any such travel," further inquiry was directed. The Commissioner having reported that no further evidence had been laid before him on this branch, the plaintiffs were incontinently turned out of court with costs on both branches of the inquiry. Thus was the unhappy spectacle presented of conceded rights being violated without any remedy for their infraction—a solecism no less than a reproach in the administration of justice! And yet, how simple and easy appears the redress to which the complainants are entitled. The inquiry relates to the "probable effect" of the defendants' acts. If they are "*probably*" injurious to the rights secured by the complainants charter, they are to be restrained, and if *certainly* inju-

rious, to be atoned for, by making adequate compensation. But is not the diversion of thousands of travellers from the only route which once existed for their transit to a new route recently established, a certain loss, and under the circumstances of this case, a certain wrong? It is a loss which can be counted to a cent, and is inflicted without the color even of law or justice. Yet, it is neither restrained nor redressed. Then, as to the way travel from the Junction to Richmond, concede that the "cross" travel as it is called, does not belong to the complainants. It was abundantly proved by the Central Company's own agents, that the Company was gathering both freight and travel at the Junction, and all other points on their line from that place to Richmond, and were carrying that and the "cross" freight and travel indiscriminately over their road to Richmond, and because the *complainants* could not discriminate in their proof how much of the gain thus acquired was lawful and how much unlawful, and the defendants would not, the complainants must sit down content, and without redress, not for a "probable" but a palpable and admitted abuse of their chartered rights!

No such difficulties have attended the enforcement of the obligations of state faith in other commonwealths. In the case of the Boston and Lowell Rail Road Company, *vs.* the Salem and Lowell Rail Road Company, Chief Justice Shaw, of Massachusetts, gives a bright example of the firm and steady hand with which those obligations, and the rights flowing from them, should be upheld and enforced. That, too, was a case of a chartered exclusive right to carry, for a long term of years, the freight and passenger travel on a rail road, between given points, Lowell and Boston. No other roads were to be established, within that period, between Lowell and Boston, whose *termini* should be within five miles of either place. The defendants, as here, sought to

evade the restriction by uniting sections of their roads which were chartered to run in a different direction, at an angle, such as is made at Gordonsville, in the combined lines of the Central and Alexandria and Gordonsville Roads, and by concert between them, formed a rival continuous route for passengers and freight, between Lowell and Boston. The Court had no hesitation in injoining these companies from carrying any persons or property, by this continuous route, between Lowell and Boston, and from all the means and appliances which had been adopted for that purpose. May we indulge the hope that the Court of Appeals of Virginia will look to this example.

**A CITIZEN OF VIRGINIA,**

*Interested only in the Preservation of the Faith of the State,  
and having no interest in the R. F. & P. R. R. Co.*

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To the Editors of the Enquirer:

*Messrs. Editors*,—I have carefully perused the articles of Mr. Robert Tyler, of Philadelphia, on the subject of the violation of the charter of the Richmond, Fredericksburg and Potomac Rail Road Company, with your comments on the same, and the reply of Mr. James Lyons, the counsel of the Virginia Central Rail Road Company, to Mr. Tyler, and am really at a loss to perceive how, with the admitted facts of the case, there can be two opinions on the subject. Let us look at them, Messrs. Editors, concisely, in a plain, common sense aspect, and without unnecessary mystification. As Mr. Tyler well observes, “the credit of Virginia cannot be maintained on the Stock Exchange of New York, or

Philadelphia, or in any other money market, by special pleading, in justification of a real or virtual *repudiation of a solemn contract.*”

The state of Virginia, as an inducement to capitalists to subscribe large sums of money for the construction of the Richmond, Fredericksburg and Potomac Rail Road, *pledged itself*, for the period of thirty years, *not* to “allow any other rail road to be constructed between the city of Richmond, and the city of Washington, or for any portion of the said distance, the probable effect of which would be to diminish the number of passengers travelling between the one city and the other, on the rail road authorized by this act, or to compel the company, in order to retain such passengers, to reduce the passage money.” A rail road is, in consequence, built through a comparatively barren district of country, which, without such a pledge, would probably, not even at this day, have been in existence. When, in the face of this pledge, the Virginia Central (then the Louisa) Rail Road Company was about to extend its road, from the Junction to Richmond, a distance of twenty-six or twenty-eight miles, on a line nearly parallel with that of the Richmond, Fredericksburg and Potomac Rail Road, and the Richmond, Fredericksburg and Potomac Rail Road Company applied for an injunction against the construction of the work, the Virginia Central Company admit the exclusive right of the Richmond, Fredericksburg and Potomac Company, under their act of incorporation to convey *all passengers travelling from Washington to Richmond, or from Richmond to Washington, and disclaim the purpose of conveying such passengers.* On this admission and disclaimer, the Judge of the Superior Court of Chancery for the Richmond district, whilst acknowledging the rights of the Richmond, Fredericksburg and Potomac Rail Road Company, and the duty of the Court to protect them, declines enjoining *the construction*

